

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Vonnie Darin Darby,)	
)	
Plaintiff,)	
)	ORDER (AMENDED)
vs.)	
)	
Tim Schuetzle, Warden,)	
)	Case No. 1:08-cv-110
Defendant.)	

Plaintiff, an inmate at the North Dakota State Penitentiary, seeks to commence the above entitled action without the prepayment of fees and has submitted an application to proceed *in forma pauperis*. Plaintiff has also submitted a declaration that makes the showing required by Section 1915(a).

Although he is a prisoner, Plaintiff must pay the statutory filing fee of \$350.00 for this action pursuant to 28 U.S.C. § 1915(b)(1). Based upon the information contained in the Certificate of Inmate Account and Assets submitted by the plaintiff, dated December 22, 2008, a partial filing fee of \$ 1.00 is hereby assessed for this action pursuant to 28 U.S.C. § 1915(b)(1). Thereafter, Plaintiff will be obligated to make monthly payments in the amount as determined by 28 U.S.C. § 1915(b)(2) until said filing fee is paid in full. The full fee will be collected even if the court dismisses the case because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks money damages against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2); 28 U.S.C. § 1915(A).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiff's request to proceed in this matter in forma pauperis is **GRANTED**.
2. Plaintiff is assessed an initial partial filing fee of \$1.00. See 28 U.S.C. § 1915(b). The court need not await payment of the filing fee to conduct its initial review of Plaintiff's complaint and, therefore, directs the Clerk of Court to file Plaintiff's complaint. Cf.

Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (“[T]he provisions of § 1915(b)(4) permit a prisoner to appeal if the prisoner has no assets and no means to pay the initial partial appellate filing fee. In such a case, the whole of the appellate filing fees are to be collected and paid by the installment method contained in § 1915(b)(2)).

3. The remaining filing fee owed shall be paid to the Clerk of this Court from Plaintiff's inmate spending account or release aid account in accordance with 28 U.S.C. § 1915(b)(2), which requires the prisoner to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. Such payment shall be made each time the amount in the inmate spending account or release aid account exceeds \$10.00 and continue until the statutory fee of \$350.00 is paid in full.
4. A notice of this obligation shall be sent to Plaintiff and the appropriate prison official.
5. The Clerk of Court shall file the complaint. The Clerk of Court shall not serve Defendant with the summons and complaint until directed to do so by the court, following completion of substantive review of Plaintiff's claims under 28 U.S.C. § 1915A.

Dated this 6th day of January, 2009.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge